Petriman, Viorica

From: Riva, Steven
Sent: Tuesday, October 07, 2014 6:36 AM
To: Petriman, Viorica
Cc: Filippelli, John; Ruvo, Richard
Subject: FW: Greenidge Title IV/V permits
Attachments: 2014 10 06 SC EJ Supplemental Ltr re Greenidge Title V.pdf; 2014 01 16 Draft COMAR 26.11.39 - SO2.pdf; 2014 02 12 MDE SO2 Modeling Presentation.pdf

FYI
From: Joshua Berman [mailto:josh.berman@sierraclub.org]
Sent: Monday, October 06, 2014 4:10 PM
To: steven.flint@dec.ny.gov; cmhogan@gw.dec.state.ny.us; dpharkaw@gw.dec.state.ny.us; efmctier@gw.dec.state.ny.us; seshelle@gw.dec.state.ny.us; jjsnyder@gw.dec.state.ny.us
Cc: Mary Whittle; Philip Goo; Riva, Steven
Subject: Greenidge Title IV/V permits

Dear Mr. Snyder, Mr. McTiernan, Mr. Flint, Mr. Hogan, Mr. Sheeley, and Mr. Harkawik:

Thank you for taking time to meet with us on September 10th regarding the proposed reactivation of the Greenidge facility. Please find attached a letter providing supplemental information based on our discussion.

Please do not hesitate to contact us with any questions regarding the letter and attachments.

Thank you,

Joshua Berman
Staff Attorney
Sierra Club Environmental Law Program
50 F St. NW, 8th Floor
Washington, DC 20001
Tel: (202) 650-6062
Fax: (202) 547-6009

Draft 01-16-14
4:15 PM
For discussion purposes only.

DRAFT

Draft of SO_2 Regulation

.01 Definitions.

A. In this chapter, the following terms have the meanings indicated.

B. Terms Defined.

(1) "Affected electric generating unit" means any one of the following coal-fired electric generating units:

(a) Brandon Shores Units 1 and 2;
(b) C.P. Crane Units 1 and 2;
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(g) Warrior Run.

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(3) “1-hour emission rate” means an arithmetic average of all the valid data for emission rates recorded from a continuous monitoring system on a 1- hour basis.

.02 Applicability and General Requirements.

A. Applicability. This chapter applies to the following coal-fired electric generating units:

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(1) An affected electric generating unit shall comply with the 1-hour SO_2 rate as provided in this regulation.

(2) SO_2 Emission Limitations. The following rate limits apply when the affected electric generating unit is operating in non-bypass stack operation.

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Dickerson Units 1, 2 and 3	1000
H.A. Wagner Unit 2	500
H.A. Wagner Unit 3	1000
Morgantown Unit 1	1500
Morgantown Unit 2	1500
Warrior Run	Under development

(3)30-Day Averaging. MDE is considering provisions that would establish 30-day averaging that will still guarantee attainment with the 1-hour SO_2 NAAQS. MDE understands there is research going on in this area. Comments on this issue are encouraged.

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(2) Each subsequent quarterly report shall be submitted to the Department not later than 30-days following the end of the calendar quarter.

(3) Each quarterly report shall specify any exceedances of the SO_2 emission rate limitations, the date, time and SO_2 emissions of each exceedance, the reason for the exceedance, and any corrective action taken.

Maryland Department of the Environment

SO2 Regulatory Support Modeling

What Emission Rates Are Needed to Comply With the 1-Hour SO2 Standard?

Michael Woodman/Tad Aburn

Stakeholder Meeting # 3

Draft Power Plant Regulations – February 12, 2014

Topics Covered

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- Role of modeling in 1-hour SO2 compliance
- Modeling completed by Maryland
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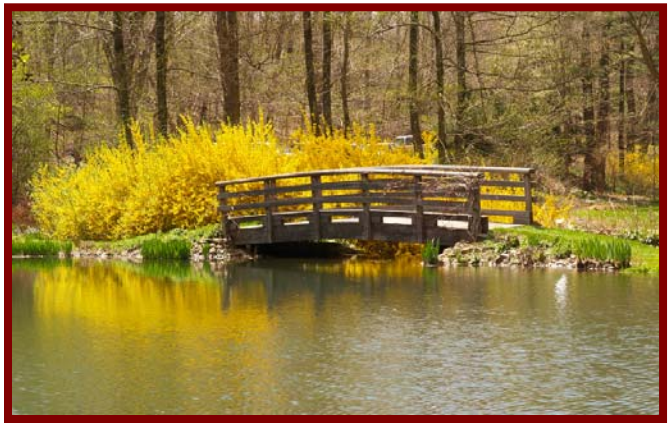

The Model

- EPA has approved regulatory model that must be used to perform this kind of modeling
- The model use several different types of data
  - Physical data from the source
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- Maryland has performed modeling for all of the Raven and NRG plants
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  - The Maryland modeling was completed by MDE and the Department of Natural Resources (DNR) Power Plant Research Program (PPRP)
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  - Brandon Shores
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- This requires that all three of the plants be modeled together to insure that the potential concentrations in that area are modeled accurately

Crane Modeling Results

Allowable Rates From the Modeling

	Sierra Club "Stand Alone"	MDE/PPRP "Stand Alone"	MDE/PPRP "Cumulative"
Unit #1	Not Completed	1,501 lbs/hr	1,436 lbs/hr
Unit #2		1,501 lbs/hr	1,436 lbs/hr
Plant Total (Units #1 & #2)	3,482 lbs/hr	3,002 lbs/hr	
Modeled Concentration	<196.2 ug/m^3	195.6 ug/m^3	

Limits in the Regulation

1,400 lbs/hr for each unit

Wagner Modeling Results

Allowable Rates From the Modeling

	Sierra Club "Stand Alone"	MDE/PPRP "Stand Alone"	MDE/PPRP "Cumulative"
Unit #2	Not Completed	987 lbs/hr	493 lbs/hr
Unit #3		2,023 lbs/hr	1,011 lbs/hr
Plant Total (Units #2 & #3)	3,115 lbs/hr	3,010 lbs/hr	
Modeled Concentration	<196.2 ug/m^3	194.6 ug/m^3	

Limits in the Regulation

Unit #2 – 500 lbs/hr
Unit #3 – 1,000 lbs/hr

Brandon Shores Modeling Results

Allowable Rates From the Modeling

	Sierra Club "Stand Alone"	MDE/PPRP "Stand Alone"	MDE/PPRP "Cumulative"
Unit #1	Not Completed	1,797 lbs/hr	1,026 lbs/hr
Unit #2		1,797 lbs/hr	1,026 lbs/hr
Plant Total (Units #1 & #2)	2,182 lbs/hr	3,594 lbs/hr	
Modeled Concentration	196 ug/m^3	194 ug/m^3	

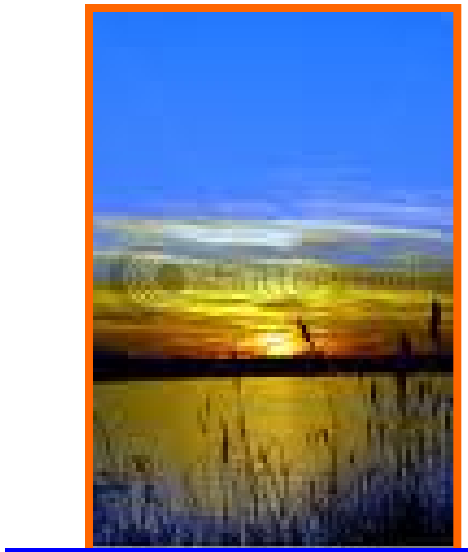
Limits in the Regulation

1,000 lbs/hr for each unit


NRG

Modeling NRG Energy

- In designing their scrubber systems, for all three of their plants, NRG vents to tall “by-pass” stacks when the scrubber or the continuous emission monitors are being repaired or tested
  - Emissions may also vent to the by-pass stacks during emergencies
- Because of this, the modeling must look at operations when the scrubbers are running and also when emissions vent to by-pass stacks



Chalk Point Modeling Results

Allowable Rates From the Modeling

Scrubber Stack (400 feet) Results		
	Sierra Club	MDE/PPRP
Facility Emissions (Total of 2 units)	2,300.2	2,430.9 lbs/hr
Modeled Concentration	<196.2 ug/m^3	195.6 ug/m^3

By-Pass Stack (729 feet) Results		
	Sierra Club	MDE/PPRP
Facility Emissions (Total of 2 units)	Not Completed	11,705.8 lbs/hr
Modeled Concentration	—	196.0 ug/m^3

Limits in the Regulation

Scrubber - 2,400 lbs/hr for all units – one stack

By-Pass – 11,500 lbs/hr for all units – one stack

Morgantown Modeling Results

Allowable Rates From the Modeling

Scrubber Stack (400 feet) Results		
	Sierra Club	MDE/PPRP
Facility Emissions (Total of 2 units)	2,615.5 lbs/hr	3,126.2 lbs/hr
Modeled Concentration	<196.2 ug/m^3	195.0 ug/m^3

By-Pass Stack (700 feet) Results		
	Sierra Club	MDE/PPRP
Facility Emissions (Total of 2 units)	Not Completed	7,551.6 lbs/hr
Modeled Concentration	—	195.8 ug/m^3

Limits in the Regulation

Scrubber - 1,500 lbs/hr for each unit

By-Pass – 7,500 lbs/hr for for both units

Dickerson Modeling Results

Allowable Rates From the Modeling

Scrubber Stack (400 feet) Results		
	Sierra Club	MDE/PPRP
Facility Emissions (Total of 3 units)	360 lbs/hr	1,043.3 lbs/hr
Modeled Concentration	<196.2 ug/m^3	195.6 ug/m^3 —

By-Pass Stack (703 feet) Results		
	Sierra Club	MDE/PPRP
Facility Emissions (Total of 3 units)	Not Completed	8,909.8 lbs/hr
Modeled Concentration	—	195.9 ug/m^3

Limits in the Regulation

Scrubber - 1,000 lbs/hr for all units – one stack

By-Pass – 8,900 lbs/hr for All units – one stack


ANY
QUESTIONS
?

EARTHJUSTICE

ALASKA CALIFORNIA FLORIDA MID-PACIFIC NORTHEAST NORTHERN ROCKIES
NORTHWEST ROCKY MOUNTAIN WASHINGTON, D.C. INTERNATIONAL

October 6, 2014

VIA ELECTRONIC MAIL

Jared Snyder, Assistant Commissioner, Air Resources, Climate Change and Energy
Edward McTiernan, Deputy Commissioner and General Counsel
Steven Flint, Assistant Director, Division of Air Resources
Chris Hogan, Division of Environmental Permits
New York State Department of Environmental Conservation
625 Broadway
Albany, New York 12233-1750

Scott Sheeley, Regional Permit Administrator
Dennis Harkawik, Region Attorney
Division of Environmental Permits
New York State Department of Environmental Conservation
6274 East Avon-Lima Rd.
Avon, NY 14414-9519

RE: Greenidge Generating Station, Dresden, New York Applications for Title V and Title IV (Phase II Acid Rain) Permits, Proposed Reactivation of the Facility

Dear Mr. Snyder, Mr. McTiernan, Mr. Flint, Mr. Hogan, Mr. Sheeley, and Mr. Harkawik:

Thank you for taking the time to meet with us on September 10th regarding the proposed reactivation of the Greenidge Generating Station located in Dresden, NY ("Greenidge" or "the facility"), and the related air permit applications submitted to the New York State Department of Environmental Conservation ("DEC") by Greenidge Generation LLC on May 16, 2014 (DEC ID No. 8-5736-00004).

As promised at the meeting, please find attached Maryland's current draft regulation addressing the state's obligation to ensure compliance with the 2010 1-hour sulfur dioxide National Ambient Air Quality Standard (NAAQS) by imposing modeling-informed hourly emission limits on each coal unit in Maryland. The basis for the hourly emission limits contained in the regulation is described in the attached PowerPoint presentation, delivered by Maryland Department of the Environment (MDE) Air Director Tad Aburn and air dispersion modeler Michael Woodman on February 12, 2014. MDE conducted air dispersion modeling to evaluate the ambient impacts of the sulfur dioxide emissions from each of the coal units in the state. As the PowerPoint illustrates, MDE's modeling results strongly reaffirmed the results of air dispersion modeling previously submitted to MDE by the Sierra Club. MDE's modeled results were then used to identify hourly emission rates for each unit necessary to ensure the

overall ambient impacts of the plant's emissions remained below the 2010 1-hour NAAQS. We believe a similar approach is appropriate in New York, particularly in light of the Department's obligations under 6 N.Y.C.R.R. § 200.6. To the extent DEC is interested in further information regarding the methodology used by MDE to develop its proposed 1-hour sulfur dioxide limits, we encourage DEC to reach out directly to Mr. Aburn and Mr. Woodman.

In addition, we wished to supplement our August 5th letter by bringing the Department's attention to several additional documents which further refute Atlas' claims regarding GMMM's intentions for the facility.

1. GMMM's Communications to AEE2 Regarding the Future of Greenidge

Atlas submitted with its Title IV and Title V permit application March 13, 2013 declarations of Vincent Alison, one of the owners of GMMM Greenidge LLC, and Peter Norgeot, former president of AEE2. In his declaration, Mr. Alison claims that "[n]either myself nor (to my knowledge) anyone associated with GMMM ever told anyone associated with AEE2 that GMMM intended to scrap the Greenidge Facility." March 13, 2013 Declaration of Vincent Alison, ¶ 14. Mr. Norgeot also stated that "GMMM LLC did not at any time communicate to me what its business plan was or the Greenidge Generating Station, including whether the Facility would be demolished." March 13, 2013 Declaration of Peter Norgeot, Former President AEE2, ¶ 17.

Whereas Atlas has argued that GMMM never communicated its intentions for the facility to AEE2, these statements are directly contradicted by the 2012 bankruptcy court declarations of Firdaus Pohowalla, Director of Barclays Capital, the company assisting AEE2 in the bankruptcy proceeding, as well as Mr. Norgeot himself. Contrary to Mr. Alison's argument that GMMM never communicated its intentions for Greenidge, Mr. Pohowalla stated that "[GMMM] provided information demonstrating experience with power plant demolition, asbestos abatement, and other skills necessary to permanently retire the Non-Operating Facilities, salvage or scrap the equipment, demolish the buildings, and comply with applicable asset retirement and environmental care obligations." *In re: AES Eastern Energy, L.P.*, Case No. 11-14138 (KJC) (U.S. Bankruptcy Delaware) (Sept. 19, 2012) (Doc. 749, ¶ 8). Similarly, Mr. Norgeot in 2012 stated that the sale of Greenidge and the other non-operating AEE2 plants to GMMM "provides for the assumption of significant asset retirement and environmental closure liabilities for the Residual Assets." *Id.* at Doc. 748, ¶ 4.

2. Atlas' Attempts to Discredit AEE2's Bankruptcy Filings

Without directly responding to or explaining the contradictory statements in the 2012 bankruptcy filings, Atlas instead attempts to discount these filings by arguing that "[a]s with many bankruptcy proceedings, decisions made during AEE2's bankruptcy were often results-oriented and designed principally to expeditiously consummate transactions that would realize revenue for the bankruptcy estate and AEE2's creditors." May 16, 2014 Letter from Frank Bifera, Hiscock & Barclay, to Thomas Marriott, DEC Regional Air Pollution Control Engineer, Region 8, at 3. However, the bankruptcy declarations of Mr. Pohowalla and Mr. Norgeot again refute Atlas' claim that AEE2's bankruptcy motives were primarily to realize revenue for the

estate. As Mr. Pohowalla stated, *"[t]he primary benefit to the estates of the transaction is the assumption of asset retirement and environmental closure costs*." *In re: AES Eastern Energy, L.P.*, (Doc. 749, ¶ 11) (emphasis added). Mr. Pohowalla actually contradicted Atlas' argument that the bankruptcy proceeding was simply revenue-oriented, arguing instead that "[t]he cash purchase price of $2.25 million payable to the Debtors will benefit the estates, but *more significant is the assumption of the Debtors' liabilities for future asset retirement, investigation, and environmental closure costs.*" *Id*., ¶ 15. (emphasis added). Similarly refuting Atlas' revenue-based arguments, Mr. Norgeot's declaration noted that AEE2 even rejected another bid with $500,000 additional cash consideration because of "a lack of assurance that the Second Bidder would be able to satisfy the assumed liabilities…" *Id.* at Doc. 748, ¶ 16.

AEE2's intent was further made clear by its September 19, 2012 motion with the United States Bankruptcy Court for the District of Delaware, which stated that:

> The Purchaser, which intends to permanently retire the Non-Operating Facilities, salvage or scrap the equipment, and demolish the buildings so the sites eventually can be redeveloped, has extensive experience with power plant demolitions, asbestos abatement, and other necessary skills.

Id. at Doc. 708, ¶ 4.

In furtherance of this clear intent, AEE2's Joint Plan of Liquidation stated that

> The Sellers shall, as necessary, file (i) retirement notices for the Westover and Greenidge Facilities with the New York Public Service Commission, (ii) a petition for a declaratory ruling that the Westover and Greenidge Facilities can be permanently retired without six months advance notice due to the prior notification of long-term protective layup status, and (iii) a petition under Section 70 of the Public Service Law for transfer of the Facilities."

Id., at Doc. 714, 88.

On September 18, 2012, AEE2 notified the PSC, NYISO, and NYSEG, that it intended "to permanently retire the Greenidge Unit 4 facility on September 21, 2012 and soon thereafter transfer the facility to a salvage company to dismantle and salvage the facility." *See* Sept. 18, 2012 Letter from William B. Rady, Director AEE2, to Hon. Jaclyn A. Brilling, Secretary PSC (Exhibit C). AEE2 retained ownership of the retired facility until December 28, 2012.

3. Conclusion

Without any sufficient explanation for these definitive retirement statements, it is clear that AEE2's intent at the time of its permanent shutdown on September 18, 2012, was to permanently retire the facility and have GMMM assume the requisite environmental closure liabilities. We also note that EPA, upon review of our previous letter and the accompanying documents, stated that "[t]hese facts and statements suggest that AEE2 and GMMM did not manifest a continuous intent and concrete plans to restart the facility." Sept. 16, 2014 Letter from

Steven Riva, EPA Region 2, to Thomas Marriott, DEC Regional Air Pollution Control Engineer, Region 8, at 3.

We therefore respectfully request that DEC fulfill its duty to protect the health and environment of New York's citizens by requiring Greenidge Generation LLC to apply for and receive an NSR/PSD permit before the facility can be returned to service. Further, as set forth more fully in our prior letter that DEC should require the applicant to amend the Title IV and Title V permit application to include SO_2 limits sufficient to prevent violations of the 1-hour SO_2 NAAQS and 6 N.Y.C.R.R. § 200.6 and 211.1 and contain NO_x limits in compliance with New York's applicable NOx RACT regulations.

Sincerely,

/s/ Mary Whittle

Mary Whittle
Earthjustice
(215) 717-4524
mwhittle@earthjustice.org

Joshua Berman
Sierra Club
(202) 650-6062
jberman@sierraclub.org

Philip Goo
Law Office of Philip M. Goo, PLLC
(404) 583-9451
goolawoffice@gmail.com

Counsel for Sierra Club

cc: Steven C. Riva, Chief, EPA Region 2, Permitting Section, Air Programs Branch
riva.steven@epa.gov

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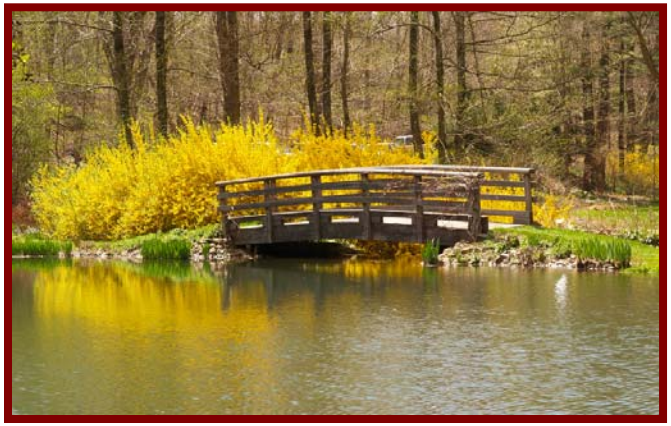

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Allowable Rates From the Modeling

	Sierra Club "Stand Alone"	MDE/PPRP "Stand Alone"	MDE/PPRP "Cumulative"
Unit #1	Not Completed	1,501 lbs/hr	1,436 lbs/hr
Unit #2		1,501 lbs/hr	1,436 lbs/hr
Plant Total (Units #1 & #2)	3,482 lbs/hr	3,002 lbs/hr	
Modeled Concentration	<196.2 ug/m^3	195.6 ug/m^3	

Limits in the Regulation

1,400 lbs/hr for each unit

Wagner Modeling Results

Allowable Rates From the Modeling

	Sierra Club "Stand Alone"	MDE/PPRP "Stand Alone"	MDE/PPRP "Cumulative"
Unit #2	Not Completed	987 lbs/hr	493 lbs/hr
Unit #3		2,023 lbs/hr	1,011 lbs/hr
Plant Total (Units #2 & #3)	3,115 lbs/hr	3,010 lbs/hr	
Modeled Concentration	<196.2 ug/m^3	194.6 ug/m^3	

Limits in the Regulation

Unit #2 – 500 lbs/hr
Unit #3 – 1,000 lbs/hr

Brandon Shores Modeling Results

Allowable Rates From the Modeling

	Sierra Club "Stand Alone"	MDE/PPRP "Stand Alone"	MDE/PPRP "Cumulative"
Unit #1	Not Completed	1,797 lbs/hr	1,026 lbs/hr
Unit #2		1,797 lbs/hr	1,026 lbs/hr
Plant Total (Units #1 & #2)	2,182 lbs/hr	3,594 lbs/hr	
Modeled Concentration	196 ug/m^3	194 ug/m^3	

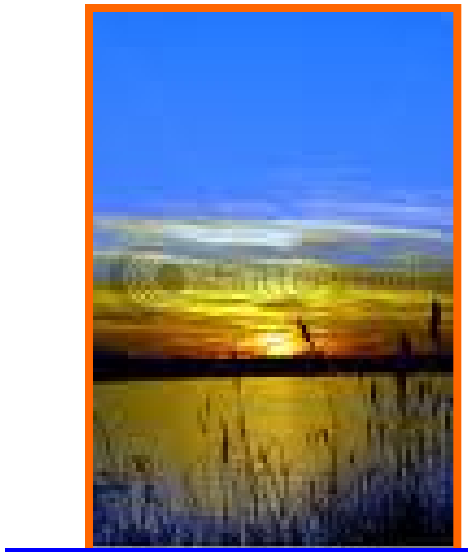
Limits in the Regulation

1,000 lbs/hr for each unit


NRG

Modeling NRG Energy

- In designing their scrubber systems, for all three of their plants, NRG vents to tall “by-pass” stacks when the scrubber or the continuous emission monitors are being repaired or tested
  - Emissions may also vent to the by-pass stacks during emergencies
- Because of this, the modeling must look at operations when the scrubbers are running and also when emissions vent to by-pass stacks



Chalk Point Modeling Results

Allowable Rates From the Modeling

Scrubber Stack (400 feet) Results		
	Sierra Club	MDE/PPRP
Facility Emissions (Total of 2 units)	2,300.2	2,430.9 lbs/hr
Modeled Concentration	<196.2 ug/m^3	195.6 ug/m^3

By-Pass Stack (729 feet) Results		
	Sierra Club	MDE/PPRP
Facility Emissions (Total of 2 units)	Not Completed	11,705.8 lbs/hr
Modeled Concentration	—	196.0 ug/m^3

Limits in the Regulation

Scrubber - 2,400 lbs/hr for all units – one stack

By-Pass – 11,500 lbs/hr for all units – one stack

Morgantown Modeling Results

Allowable Rates From the Modeling

Scrubber Stack (400 feet) Results		
	Sierra Club	MDE/PPRP
Facility Emissions (Total of 2 units)	2,615.5 lbs/hr	3,126.2 lbs/hr
Modeled Concentration	<196.2 ug/m^3	195.0 ug/m^3

By-Pass Stack (700 feet) Results		
	Sierra Club	MDE/PPRP
Facility Emissions (Total of 2 units)	Not Completed	7,551.6 lbs/hr
Modeled Concentration	—	195.8 ug/m^3

Limits in the Regulation

Scrubber - 1,500 lbs/hr for each unit

By-Pass – 7,500 lbs/hr for for both units

Dickerson Modeling Results

Allowable Rates From the Modeling

Scrubber Stack (400 feet) Results		
	Sierra Club	MDE/PPRP
Facility Emissions (Total of 3 units)	360 lbs/hr	1,043.3 lbs/hr
Modeled Concentration	<196.2 ug/m^3	195.6 ug/m^3 —

By-Pass Stack (703 feet) Results		
	Sierra Club	MDE/PPRP
Facility Emissions (Total of 3 units)	Not Completed	8,909.8 lbs/hr
Modeled Concentration	—	195.9 ug/m^3

Limits in the Regulation

Scrubber - 1,000 lbs/hr for all units – one stack

By-Pass – 8,900 lbs/hr for All units – one stack


ANY
QUESTIONS
?

EARTHJUSTICE

ALASKA CALIFORNIA FLORIDA MID-PACIFIC NORTHEAST NORTHERN ROCKIES
NORTHWEST ROCKY MOUNTAIN WASHINGTON, D.C. INTERNATIONAL

October 6, 2014

VIA ELECTRONIC MAIL

Jared Snyder, Assistant Commissioner, Air Resources, Climate Change and Energy
Edward McTiernan, Deputy Commissioner and General Counsel
Steven Flint, Assistant Director, Division of Air Resources
Chris Hogan, Division of Environmental Permits
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Scott Sheeley, Regional Permit Administrator
Dennis Harkawik, Region Attorney
Division of Environmental Permits
New York State Department of Environmental Conservation
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RE: Greenidge Generating Station, Dresden, New York Applications for Title V and Title IV (Phase II Acid Rain) Permits, Proposed Reactivation of the Facility

Dear Mr. Snyder, Mr. McTiernan, Mr. Flint, Mr. Hogan, Mr. Sheeley, and Mr. Harkawik:

Thank you for taking the time to meet with us on September 10th regarding the proposed reactivation of the Greenidge Generating Station located in Dresden, NY ("Greenidge" or "the facility"), and the related air permit applications submitted to the New York State Department of Environmental Conservation ("DEC") by Greenidge Generation LLC on May 16, 2014 (DEC ID No. 8-5736-00004).

As promised at the meeting, please find attached Maryland's current draft regulation addressing the state's obligation to ensure compliance with the 2010 1-hour sulfur dioxide National Ambient Air Quality Standard (NAAQS) by imposing modeling-informed hourly emission limits on each coal unit in Maryland. The basis for the hourly emission limits contained in the regulation is described in the attached PowerPoint presentation, delivered by Maryland Department of the Environment (MDE) Air Director Tad Aburn and air dispersion modeler Michael Woodman on February 12, 2014. MDE conducted air dispersion modeling to evaluate the ambient impacts of the sulfur dioxide emissions from each of the coal units in the state. As the PowerPoint illustrates, MDE's modeling results strongly reaffirmed the results of air dispersion modeling previously submitted to MDE by the Sierra Club. MDE's modeled results were then used to identify hourly emission rates for each unit necessary to ensure the

overall ambient impacts of the plant's emissions remained below the 2010 1-hour NAAQS. We believe a similar approach is appropriate in New York, particularly in light of the Department's obligations under 6 N.Y.C.R.R. § 200.6. To the extent DEC is interested in further information regarding the methodology used by MDE to develop its proposed 1-hour sulfur dioxide limits, we encourage DEC to reach out directly to Mr. Aburn and Mr. Woodman.

In addition, we wished to supplement our August 5th letter by bringing the Department's attention to several additional documents which further refute Atlas' claims regarding GMMM's intentions for the facility.

1. GMMM's Communications to AEE2 Regarding the Future of Greenidge

Atlas submitted with its Title IV and Title V permit application March 13, 2013 declarations of Vincent Alison, one of the owners of GMMM Greenidge LLC, and Peter Norgeot, former president of AEE2. In his declaration, Mr. Alison claims that "[n]either myself nor (to my knowledge) anyone associated with GMMM ever told anyone associated with AEE2 that GMMM intended to scrap the Greenidge Facility." March 13, 2013 Declaration of Vincent Alison, ¶ 14. Mr. Norgeot also stated that "GMMM LLC did not at any time communicate to me what its business plan was or the Greenidge Generating Station, including whether the Facility would be demolished." March 13, 2013 Declaration of Peter Norgeot, Former President AEE2, ¶ 17.

Whereas Atlas has argued that GMMM never communicated its intentions for the facility to AEE2, these statements are directly contradicted by the 2012 bankruptcy court declarations of Firdaus Pohowalla, Director of Barclays Capital, the company assisting AEE2 in the bankruptcy proceeding, as well as Mr. Norgeot himself. Contrary to Mr. Alison's argument that GMMM never communicated its intentions for Greenidge, Mr. Pohowalla stated that "[GMMM] provided information demonstrating experience with power plant demolition, asbestos abatement, and other skills necessary to permanently retire the Non-Operating Facilities, salvage or scrap the equipment, demolish the buildings, and comply with applicable asset retirement and environmental care obligations." *In re: AES Eastern Energy, L.P.*, Case No. 11-14138 (KJC) (U.S. Bankruptcy Delaware) (Sept. 19, 2012) (Doc. 749, ¶ 8). Similarly, Mr. Norgeot in 2012 stated that the sale of Greenidge and the other non-operating AEE2 plants to GMMM "provides for the assumption of significant asset retirement and environmental closure liabilities for the Residual Assets." *Id.* at Doc. 748, ¶ 4.

2. Atlas' Attempts to Discredit AEE2's Bankruptcy Filings

Without directly responding to or explaining the contradictory statements in the 2012 bankruptcy filings, Atlas instead attempts to discount these filings by arguing that "[a]s with many bankruptcy proceedings, decisions made during AEE2's bankruptcy were often results-oriented and designed principally to expeditiously consummate transactions that would realize revenue for the bankruptcy estate and AEE2's creditors." May 16, 2014 Letter from Frank Bifera, Hiscock & Barclay, to Thomas Marriott, DEC Regional Air Pollution Control Engineer, Region 8, at 3. However, the bankruptcy declarations of Mr. Pohowalla and Mr. Norgeot again refute Atlas' claim that AEE2's bankruptcy motives were primarily to realize revenue for the

estate. As Mr. Pohowalla stated, *"[t]he primary benefit to the estates of the transaction is the assumption of asset retirement and environmental closure costs*." *In re: AES Eastern Energy, L.P.*, (Doc. 749, ¶ 11) (emphasis added). Mr. Pohowalla actually contradicted Atlas' argument that the bankruptcy proceeding was simply revenue-oriented, arguing instead that "[t]he cash purchase price of $2.25 million payable to the Debtors will benefit the estates, but *more significant is the assumption of the Debtors' liabilities for future asset retirement, investigation, and environmental closure costs.*" *Id*., ¶ 15. (emphasis added). Similarly refuting Atlas' revenue-based arguments, Mr. Norgeot's declaration noted that AEE2 even rejected another bid with $500,000 additional cash consideration because of "a lack of assurance that the Second Bidder would be able to satisfy the assumed liabilities…" *Id.* at Doc. 748, ¶ 16.

AEE2's intent was further made clear by its September 19, 2012 motion with the United States Bankruptcy Court for the District of Delaware, which stated that:

> The Purchaser, which intends to permanently retire the Non-Operating Facilities, salvage or scrap the equipment, and demolish the buildings so the sites eventually can be redeveloped, has extensive experience with power plant demolitions, asbestos abatement, and other necessary skills.

Id. at Doc. 708, ¶ 4.

In furtherance of this clear intent, AEE2's Joint Plan of Liquidation stated that

> The Sellers shall, as necessary, file (i) retirement notices for the Westover and Greenidge Facilities with the New York Public Service Commission, (ii) a petition for a declaratory ruling that the Westover and Greenidge Facilities can be permanently retired without six months advance notice due to the prior notification of long-term protective layup status, and (iii) a petition under Section 70 of the Public Service Law for transfer of the Facilities."

Id., at Doc. 714, 88.

On September 18, 2012, AEE2 notified the PSC, NYISO, and NYSEG, that it intended "to permanently retire the Greenidge Unit 4 facility on September 21, 2012 and soon thereafter transfer the facility to a salvage company to dismantle and salvage the facility." *See* Sept. 18, 2012 Letter from William B. Rady, Director AEE2, to Hon. Jaclyn A. Brilling, Secretary PSC (Exhibit C). AEE2 retained ownership of the retired facility until December 28, 2012.

3. Conclusion

Without any sufficient explanation for these definitive retirement statements, it is clear that AEE2's intent at the time of its permanent shutdown on September 18, 2012, was to permanently retire the facility and have GMMM assume the requisite environmental closure liabilities. We also note that EPA, upon review of our previous letter and the accompanying documents, stated that "[t]hese facts and statements suggest that AEE2 and GMMM did not manifest a continuous intent and concrete plans to restart the facility." Sept. 16, 2014 Letter from

Steven Riva, EPA Region 2, to Thomas Marriott, DEC Regional Air Pollution Control Engineer, Region 8, at 3.

We therefore respectfully request that DEC fulfill its duty to protect the health and environment of New York's citizens by requiring Greenidge Generation LLC to apply for and receive an NSR/PSD permit before the facility can be returned to service. Further, as set forth more fully in our prior letter that DEC should require the applicant to amend the Title IV and Title V permit application to include SO_2 limits sufficient to prevent violations of the 1-hour SO_2 NAAQS and 6 N.Y.C.R.R. § 200.6 and 211.1 and contain NO_x limits in compliance with New York's applicable NOx RACT regulations.

Sincerely,

/s/ Mary Whittle

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